



STATE MINING AND GEOLOGY BOARD

Policy and Legislation Committee

Brian Baca, Chair; Erin Garner; Benjamin Licari; Kathy Lund

EXECUTIVE OFFICER'S REPORT

For Meeting Date: March 10, 2011

Agenda Item No. 4: Discussion of Statutory Language to Clarify Public Resources Code Section 2774(c) pertaining to Lead Agency Certification of Reclamation Plans pursuant to the Surface Mining and Reclamation Act.

INTRODUCTION: Under the Surface Mining and Reclamation Act (SMARA), Public Resources Code Section 2774(c) requires that a lead agency certify to the Director of the Department of Conservation (DOC) and also submit to the director for use in reviewing the reclamation plan or plan amendments 1) information from any related document prepared, adopted, or certified pursuant to Division 13 (commencing with Section 21000), and shall submit any other pertinent information, and 2) a reclamation plan is in compliance with the applicable requirements of Article 1 of the State Mining and Geology Board (SMGB), regulations, commencing with California Code of Regulations (CCR) Section 3500.

Specifically, the issue is that staff of the local agency cannot make a conclusionary determination that a reclamation plan is complete and in compliance with SMARA. Only the decision-makers can make such a conclusionary determination. Regulations need to be considered that interpret this requirement to mean that the Planning Director of an agency makes a preliminary determination subject to later consideration by the decision-makers in a public hearing. Preliminary discussion was held at the SMGB's Policy and Legislation Committee's February 10, 2011, meeting, with discussions to continue at its next scheduled meeting.

STATUTORY AUTHORITY: Pursuant to SMARA, a lead agency is defined in PRC Section 2728 as:

"Lead agency" means the city, county, San Francisco Bay Conservation and Development Commission, or the board which has the principal responsibility for approving a surface mining operation or reclamation plan pursuant to this chapter."

Public Resources Code (PRC) Section 2774(c) states:

"Prior to approving a surface mining operation's reclamation plan, financial assurances, including existing financial assurances reviewed by the lead agency pursuant to subdivision (c) of Section 2770, or any amendments, the lead



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agency shall submit the plan, assurances, or amendments to the director for review. All documentation for that submission shall be submitted to the director at one time. When the lead agency submits a reclamation plan or plan amendments to the director for review, the lead agency shall also submit to the director, for use in reviewing the reclamation plan or plan amendments, information from any related document prepared, adopted, or certified pursuant to Division 13 (commencing with Section 21000), and shall submit any other pertinent information. The lead agency shall certify to the director that the reclamation plan is in compliance with the applicable requirements of Article 1 (commencing with Section 3500) of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations in effect at the time that the reclamation plan is submitted to the director for review.”

EXECUTIVE OFFICER RECOMMENDATION: The Executive Officer offers no recommendations at this time.

Respectfully submitted:

Stephen M. Testa
Executive Officer